

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 8, 2012, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Robert Bartholomew, Chairman  
Tom Day  
Nancy Bonniwell  
Rob Schuett  
Nicholas Jordan

**BOARD MEMBERS ABSENT:** Walter Schmidt  
Richard Bayer

**SECRETARY TO THE BOARD:** Nancy M. Bonniwell

**OTHERS PRESENT** Town of Merton Board of Adjustment  
Mary E. Finet, Senior Land Use Specialist  
Wesley and Pamela Jones, BA12:001, petitioners  
Dwight Simon, BA12:001, neighbor  
Olaf and Ruth Harken, BA12:002, petitioners  
Robert Reimer, Mukwonago Remodeling LLC, BA12:002, builder  
Mike Moennig, Mukwonago Remodeling LLC, BA12:002, builder  
Stuart and Mary Vogel, BA12:03, petitioners  
Robert Quadracci, BA12:004, petitioner  
Greg Maniaci, Regency Builders Inc., BA12:004, builder  
Mike Bertram, Regency Builders Inc., BA12:004, builder

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Day *I move to approve the Summary of the Meeting of January 11, 2012.*

The motion was seconded by Mr. Schuett and carried with three yes votes. Ms. Bonniwell and Mr. Jordan abstained because they were not present for the meeting of January 11, 2012.

**NEW BUSINESS:**

**BA12:001 WESLEY AND PAMELA JONES:**

Ms. Bonniwell *I move to approve road setback variances for the proposed covered porch and garage addition, as requested by the applicants, subject to the*

*conditions recommended in the Staff Report, with the following modifications:*

*Condition No. 1 shall be modified to read "Excluding the overhangs, the covered porch shall extend no closer to the road than the closest point of the existing deck and the garage addition shall extend no more than 6.2 ft. closer to the road than the closest point of the existing deck."*

*The reasons, as stated in the Staff Report, shall be revised to eliminate all references to the Planning and Zoning Division staff's recommended denial of the requested road setback variance for the garage addition and shall note that because the lot is much narrower than required, there is a constraint on the construction of a reasonably-sized garage.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the requested road setback variance for the proposed covered porch, **denial** of the requested road setback variance for the proposed addition to the attached garage, but **approval** of a road setback variance to permit the construction of an addition to the attached garage that will extend no closer to the road than the previously authorized deck, subject to the following conditions:

1. The garage addition and the covered porch shall be located no closer to the road than the closest point of the existing deck, excluding the overhang.
2. The overhangs on the garage addition and porch shall not exceed two (2) ft. in width.
3. Prior to the issuance of a Zoning Permit, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed garage addition and porch, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the garage addition and covered porch does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that no adverse drainage occurs onto the adjacent properties as a result of the construction of the garage addition and porch. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

6. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested road setback variance for the proposed garage addition would be unnecessarily burdensome. However, the denial of any road setback variance at all would preclude a two-car garage, which would be unnecessarily burdensome. A garage addition extending no closer to the road than the existing deck, as recommended by the Planning and Zoning Division staff, will allow the garage to be expanded to accommodate the parking of two cars, although they would need to be parked one in front of the other, rather than side-by-side. Further, it is felt that it would be unnecessarily burdensome and serve no useful purpose to deny the requested road setback variance to allow the existing deck, for which a road setback variance was previously granted, to be replaced by a covered porch that would extend no closer to the road.

Variances should only be granted to provide the minimum relief necessary for a reasonable use of the property and while the narrow lot width and the configuration of the house and garage are physical limitations that justify some relief from the road setback requirement, the road setback variance necessary to permit the garage addition, as proposed, exceeds the minimum relief necessary for a reasonable use of the property. The road setback variances recommended by the Planning and Zoning Division staff are consistent with the road setback variance that was granted in 1995, will not create a safety hazard, are not contrary to the public interest, and will not adversely affect the neighboring property owners. Therefore, the approval of road setback variances to permit an addition to the attached garage and the replacement of an existing deck with a covered porch, with the conditions recommended by the Planning and Zoning Division staff, is in conformance with the purpose and intent of the Ordinance.

**BA12:002 OLAF AND RUTH HARKEN:**

Mr. Day

*I move to approve the request, in accordance with the Staff's recommendation, with the conditions recommended in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the floodplain setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the proposed remodeling and expansion of the residence, subject to the following conditions:

1. The addition shall be constructed in substantial conformance with the plans submitted with the application, with the addition, not including the overhang, extending no more than 15 ft. from the south wall of the residence.
2. A detailed cost estimate for the proposed construction must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
3. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of a floodplain setback variance would be unnecessarily burdensome, as it would preclude any expansion of an inadequately-sized dining room without major modifications to the interior layout of the home.

Further, the proposed addition will be farther from the lake than the existing residence and in conformance with all Ordinance requirements, with the exception of floodplain setback. Although the addition will not conform with the floodplain setback requirement, it will be approximately 6 ft. above the 100-year flood elevation and thus in no danger of flooding. Finally, the proposed addition has been designed to be in keeping with the architecture of the home and it represents a very minor expansion to a substantial home, which will not adversely affect the neighboring properties and is not contrary to the public interest. Therefore, the approval of a floodplain setback variance to permit the proposed remodeling and expansion of the residence, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA12:003 STUART AND MARY VOGEL:**

Ms. Bonniwell

*I move to **approve** the request, subject to the conditions recommended in the Staff Report, with the following changes:*

*Condition No. 2 shall be eliminated.*

*Condition No. 3 shall be revised to read "The new patio must conform with all locational requirements of the Ordinance, unless additional variances are obtained. If desired, a deck may be substituted for the proposed patio."*

*Condition No. 4 shall be eliminated.*

*Condition No. 7 shall be revised to read "Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed enclosed porch addition and any proposed patio or deck, in conformance with the conditions stated above, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval."*

*The reasons stated in the Staff Report shall be revised to eliminate the second to the last sentence, which references preservation of the 30 inch diameter oak tree, and to include the following additional reasons:*

*The lot is very small compared to the required lot size, even with a "sewer reduction", so some relief is required.*

*The house is positioned in a way that provides space between the adjacent homes and the proposed addition is not further encroaching into the offsets and conforms with all locational requirements of the Ordinance.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of variances from the open space requirement and from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the residence to be remodeled and expanded, subject to the following modifications and conditions:

1. Upon the issuance of a Zoning Permit for the proposed remodeling and expansion, the offset and open space variances granted by the Waukesha County Board of Adjustment on April 21, 1971 (File No BA71:004), to permit the existing residence to be razed and replaced with a new residence and a detached garage shall be null and void. The construction of a new residence and/or garage in the future, unless they can be constructed in conformance with all requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, will require additional variances from the Waukesha County Board of Adjustment.
2. The new enclosed porch must be at least 7 ft. from the trunk of the 30 inch diameter oak tree that is located on the lake side of the residence, even if that requires the depth of the enclosed porch to be reduced to less than 10 ft.
3. The new patio must conform with all locational requirements of the Ordinance, unless additional variances are obtained, and it must be designed to preserve the 30 inch diameter oak tree that is located on the lake side of the residence. If desired, a deck may be substituted for the proposed patio.
4. In order to ensure that the 30 inch diameter oak tree on the lake side of the residence is protected during construction, orange construction fencing shall be installed around that tree, as far as possible from the tree, prior to the commencement of construction. The construction fencing shall remain in place until construction is completed.

5. No retaining walls are permitted within 75 ft. of the lake or within 5 ft. of the side lot lines.
6. Prior to the issuance of a Zoning Permit, a complete set of house plans, drawn to scale and showing all proposed changes, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed enclosed porch addition and any proposed patio or deck, in conformance with the conditions stated above, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The Plat of Survey should verify that the new enclosed porch will be at least 7 ft. from the trunk of the 30 inch diameter oak tree that is located on the lake side of the residence.
8. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the new enclosed porch and any patio or deck does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 7.
9. A detailed cost estimate for the proposed remodeling and expansion must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A hardship exists with respect to the open space requirement because the lot area is only 8,635 sq. ft. and therefore it is impossible to conform with the minimum open space requirement of 10,500 sq. ft. A hardship also exists with respect to the 50% limit placed on remodeling a non-conforming structure. Denial of a variance to permit the cost of remodeling the residence to exceed 50% of its fair market value would be unnecessarily burdensome and serve no useful purpose. Even if denial of a variance from the 50% limit on remodeling a non-conforming structure results in the replacement of the existing residence with a new residence, the decrease in non-conformity would be insignificant.

The existing residence is in non-compliance with the locational requirements only at the southeast corner, which is 2.8 ft. from the east lot line, whereas a minimum of 7 ft. is required. Further, the residence is in non-compliance with the minimum floor area requirement because it has a total floor area of approximately 1,181 sq. ft., whereas a minimum of 1,300 sq. ft. is required. The proposed

remodeling and expansion will eliminate the non-conformance with the minimum floor area requirement and be in conformance with all locational requirements, while only slightly reducing the non-conforming open space. Finally, the approval of this request with the recommended modifications and conditions, will preserve a 30 inch diameter oak tree that greatly enhances the appearance of the property and is a significant natural resource. Therefore, the approval of an open space variance and a variance to permit a non-conforming structure to be remodeled in excess of 50% of its fair market value, with the recommended conditions, will allow the residence to be remodeled and expanded in a manner that is in the public interest and also in conformance with the purpose and intent of the Ordinance.

**BA12:004 ROBERT QUADRACCI:**

Mr. Day

*I move to **approve** the request, subject to the conditions recommended in the Staff Report and for the reasons stated in the Staff Report, with the following modifications:*

*Condition No. 1 shall be revised to read "The addition shall be constructed in accordance with the plans submitted with the application."*

*The reasons stated in the Staff Report shall be revised to eliminate all references to the modifications recommended by the Planning and Zoning Division staff and shall note that the addition, except for the bay window, will extend no closer to the lake than the existing decks.*

The motion was seconded by Mr. Schuett and carried with four yes votes. Ms. Bonniwell voted no.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the shore setback and floodplain setback requirements and for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the residence to be remodeled and expanded, subject to the modifications and conditions recommended below:

1. The proposed addition may extend to the east and west of the cantilevered dinette on the first floor of the residence. The north wall of the cantilevered dinette may also be extended, but only to the extent that the main portion of the north wall of the addition does not extend beyond the line of the wall of the second floor above it. The bay window may be re-installed in the north wall, provided it does not extend any farther from the north wall than it currently does.
2. The overhangs on the addition may not exceed two (2) ft. in width.
3. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with Condition No. 1, must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a Zoning Permit, a Plat of Survey showing all existing and proposed structures, in conformance with Condition No. 1, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

5. Prior to the issuance of a Zoning Permit, a detailed cost estimate for the proposed addition must be submitted to the Planning and Zoning Division staff.
6. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome not to grant some relief from the shore and floodplain setback requirements to permit limited expansion of the cantilevered dinette. However, variances should only be granted to provide the minimum relief necessary for a reasonable use of the property. Shore and floodplain setback variances, as recommended by the Planning and Zoning Division staff, will permit a reasonable expansion that will still facilitate remodeling of the existing kitchen and dinette into a kitchen and dinette that is in keeping with the rest of the house and that, except for the bay window, will extend no closer to the shore and the floodplain than the existing residence. This is in keeping with the purpose and intent of the Ordinance.

A variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Ordinance is justified because the existing residence is a substantial structure that has been permitted to be extensively remodeled and expanded in the past. The extensive remodeling and expansion that has been done in the past and the recently approved attached garage addition make it extremely unlikely that denial of the requested variance from the 50% limit on remodeling a non-conforming structure would result in the residence being removed and replaced with a new residence in a more conforming location. Therefore, denial of the request for an additional variance to remodel a non-conforming structure in excess of 50% of its fair market value would serve no useful purpose and would be unnecessarily burdensome.

Although the existing residence does not meet the shore and floodplain setback requirements, it is elevated approximately 30 ft. above the lake and the 100-year floodplain and the heavily wooded slope provides a buffer between the lake and the residence. Further, the proposed addition will be cantilevered and therefore will not result in any disturbance to the ground. Modified as recommended by the Planning and Zoning Division staff, the proposed addition will not be contrary to the public interest. Therefore, the approval of variances from the shore setback and floodplain setback requirements and a variance to remodel a non-conforming structure in excess of 50% of its fair market value, to permit the residence to be remodeled and expanded, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:** None.



**ADJOURNMENT:**

Mr. Day *I move to adjourn this meeting at 8:35 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy M. Bonniwell".

Nancy M. Bonniwell  
Secretary, Board of Adjustment